

AMERICAN ARBITRATION ASSOCIATION
INTERNATIONAL CONSTRUCTION INDUSTRY ARBITRATION RULES
ANSWER AND COUNTERCLAIM

TO: Leeward Construction Company, Ltd.
c/o Lewis & Greer, P.C.
Attorneys for Claimant
510 Haight Avenue
Poughkeepsie, New York 12603

Re: 50 110 T 00118 13

Leeward Construction Corp. v. American University of Antigua College of Medicine

PLEASE TAKE NOTICE that American University of Antigua College of Medicine hereby answers the Statement of Claim of Leeward Construction Company, Ltd. and Counterclaims as follows:

Claimant claims entitlement to EC\$83,059.56/US\$30,762/80 which said sum derives from an alleged "mis-tabulation as Antigua and Barbuda Sales Tax ("ABST") during the requisition process.

There is no issue that the sum was paid to Leeward. The claim here is that the sum was paid as reimbursement for ABST that AUA allegedly owed to Leeward, but was subsequently added to the amount that was paid to Leeward as a progress payment so that, when Leeward was paid on the following requisition, the amount allegedly "mis-tabulated" was deducted from that requisition leaving Leeward short on the payment of the requisition in the amount of the sum above stated.

AUA asserts herein, first, that Leeward has not provided any evidence that it actually paid the Government of Antigua and Barbuda the ABST in connection with the requisition at issue or in connection with any prior or subsequent requisition.

AUA further asserts that, even if Leeward establishes that it paid this, or any other amount of ABST, it was its responsibility and obligation to do so under the terms of the parties contract, such that the amount that Leeward was paid for the requisition at issue was correctly added to the amount of its progress payment. Leeward was not entitled to a separate or additional payment for reimbursement of ABST.

AUA further asserts by way of a defense and a counterclaim that it paid ABST to Leeward in addition to, and not as a part of its progress payments in all but the one from which Leeward's claim herein originates in the sum of EC\$3,614,552.41 as a result of error, mis-tabulation and mutual mistake, despite that Leeward provided no proof of payment of the tax and, in any event, was, itself, obligated to pay the tax without reimbursement by AUA.

Lastly, AUA asserts that it submitted its claim for a reimbursement of the said sum to the Project Architect, R. Sundaram, Sundaram Architects as required by the parties contract; and that the Project Architect has approved the claim. AUA is therefore entitled to this sum. (see the attached correspondence)

The so-called concession was simply an acknowledgment of this alleged error and by implication assumed that AUA was obligated to pay the misapplied ABST in the first place, nothing more. Because, as demonstrated above, AUA was not obligated to pay ABST, Leeward's misapplication of the money serves to reimburse AUA for a small fraction of the ABST Leeward wrongfully collected.

In sum, AUA respectfully requests that Leeward's claim be denied and that an award issue in AUA's favor declaring for the amount of the ABST that Leeward was wrongfully paid; to wit, EC \$3,614,552.

Dated: February 27, 2013
New York, New York

American University of Antigua College of
Medicine

By: 

Leonard A. Sclafani, Esq.
Law Offices of Leonard A. Sclafani, Esq.
Attorneys for Respondent AUA
One Battery Park Plaza, 33rd Fl.
New York, New York 10004
(Tel.) 212-696-988
email: l.a.s@mindspring.com

ABST Payments

\$50,075.05
\$65,398.08
\$36,694.52
\$36,586.04
\$46,519.90
\$120,969.00
\$176,431.68
\$70,116.02
\$9,666.98
\$143,779.67
\$137,766.27
\$409,676.77
\$550,835.46
\$230,721.53
\$410,551.87
\$415,282.54
\$196,410.71
\$209,080.45
\$190,590.53
\$83,083.24
\$8,586.66
<u>\$15,729.44</u>
\$3,614,552.41



SUNDARAM ARCHITECTS PVT. LTD.

ARCHITECTURE • ENGINEERING • PLANNING • INTERIORS • SERVICES

Fax : 001-845-454-3315

Date : 27.02.2013

Kind attn: Veronica A. McMillan.

M/s. Lewis & Greer, P.C.
Attorneys at Law,
510 Haight Avenue,
POUGHKEEPSIE,
NEW YORK 12603, USA

Dear Sirs,

Leeward Claim with respect to ABST

It is verified that AUA paid the ABST charged by Leeward. The amount is \$3,614,552.41

As per contract Leeward has to pay all taxes including ABST.

It is a fact that AUA has paid Leeward ABST taxes although Leeward should pay the taxes.

Please advise Leeward to return the ABST collected from AUA to AUA.

Thanking you,

Yours faithfully,
For Sundaram Architects Pvt. Ltd.

R. SUNDARAM



#19, Kumara Krupa Road, Bangalore - 560 001, India
Tel : +91 (0)80 2238 0701 / 2238 0702 / 2238 0703
Fax : +91 (0)80 2225 2339 Email : edp@sundaramarchitects.com

SUNDARAM CONSULTANTS
GROUP

ABST Payments

\$50,075.05
\$65,398.08
\$36,694.52
\$36,586.04
\$46,519.90
\$120,969.00
\$176,431.68
\$70,116.02
\$9,666.98
\$143,779.67
\$137,766.27
\$409,676.77
\$550,835.46
\$230,721.53
\$410,551.87
\$415,282.54
\$196,410.71
\$209,080.45
\$190,590.53
\$83,083.24
\$8,586.66
\$15,729.44
\$3,614,552.41

EXHIBIT A

American University of Antigua
College of Medicine
Check Request Form

Name: MIKE JOHNSON
Department: CONSTRUCTION
Date: 4/18/08

PHASE I + HOUSING CONTRACT: LEEWARD CONSTRUCTION
INTERIM PAYMENT #1.00 333,833.67
ABST 50,075.05
383,908.72

Vendor's name: LEEWARD CONSTRUCTION COMPANY LTD.
Vendor's TIN / SS#: _____
Make check payable to: LEEWARD CONSTRUCTION COMPANY LTD.
Contact name: NEIL DICKELSON
Contact phone #: 729/0072
Payment address: ALL SAINTS ROAD,
P.O. BOX 1400
ST. JOHN'S
ANTIGUA

Check amount: US \$: 383,908.72 EC \$:

APPROVED RE. PAYMENT PENDING AGREEMENT OF BILL
OF QUANTITIES RATES + COMPLETION OF CONTRACT.

Requestor's Signature: [Signature]
Request Date: 4/18/08
Dean's Approval: _____
Approval Date: _____
Finance Approval: _____
Approval Date: _____

LC000242
AUA000431

**American University of Antigua
College of Medicine
Check Request Form**

AUA Employee Information

Name: Mike Johnson

Department: Construction

DATE: May 30th, 2008

Phase 1: Classroom /Library/Nurses: Leeward Construction

Interim Payment # 2.00/A 435,986.79

ABST 65,398.02

Subtotal 501,384.81

LESS: Payment A/C: Corey Greenberg email 5/22/08 300,000.00

EC \$ 201,384.81

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS#

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Road

P.O. Box, 1400

St. John's

Antigua

US \$'s

EC \$'s

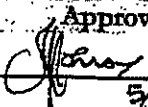
CHEQUE AMOUNT

201,384.81

Additional Comments

Approved For Payment Pending Agreement of Bill of Quantities Rates & Completion of Contract.

Approval

Requestor's Signature: 

Request Date: 5/30/08

Dean's Approval:

Approval Date:

Finance Approval:

Approval Date:

LC000270

AUA000456

**American University of Antigua
College of Medicine
Check Request Form**

AUA Employee Information

Name: Mike Johnson

Department: Construction

DATE: May 30th, 2008

Phase 1: Classroom /Library/Nurses: Leeward Construction

Interim Payment #3.00	244,630.15
ABST	36,694.52
	EC \$ 281,324.67

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS#

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Raod

P.O. Box, 1400

St. John's

Antigua

US \$'s

EC \$'s

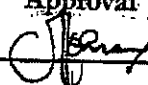
CHEQUE AMOUNT

281,324.67

Additional Comments

Approved For Payment Pending Agreement of Bill of Quantities Rates & Completion of Contract.

Approval

Requestor's Signature: 

Request Date: 5/30/08

Dean's Approval:

Approval Date:

Finance Approval:

Approval Date:

**LC000294
AUA000479**

**American University of Antigua
College of Medicine
Check Request Form**

AUA Employee InformationName: Mike JohnsonDepartment: ConstructionDATE: May 30th, 2008**Phase 1: Classroom / Library / Nurses: Leeward Construction**Interim Payment #4.00 243,906.96ABST 36,586.04EC \$ 280,493.00**Vendor Information**Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS# _____

Make check payable to: Leeward Construction Company Ltd.Contact name: Neil DickensonContact phone #: 729-0072Payment address: All Saints RaodP.O. Box, 1400St. John'sAntigua

US \$'s

EC \$'s

CHEQUE AMOUNT

280,493.00**Additional Comments**

Approved For Payment Pending Agreement of Bill of Quantities Rates & Completion
of Contract.

Approval

Requestor's Signature: _____

Request Date: _____

Dean's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

LC000317**AUA000500**

**American University of Antigua
College of Medicine
Check Request Form**

AUA Employee Information

Name: Mike Johnson
 Department: Construction
 DATE: 13-Jun-08

Phase 1: Classroom /Library/Nurses: Leeward Construction

Interim Payment #5.00	310,132.65
ABST	46,519.90
Total Payment	EC \$ 356,652.55

Vendor Information

Vendor's name: Leeward Construction Company Ltd.
 Vendor's TIN / SS#: _____
 Make check payable to: Leeward Construction Company Ltd.
 Contact name: Neil Dickenson
 Contact phone #: 729-0072
 Payment address: All Saints Raod
P.O. Box, 1400
St. John's
Antigua

US \$'s

EC \$'s

CHEQUE AMOUNT

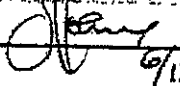
356,652.55

Additional Comments

Approved For Payment Pending Agreement of Bill of Quantities Rates & Completion of Contract.

Retention received to 5% in Accordance with Letter of Intent.

Approval

Requestor's Signature: 
 Request Date: 6/13/08
 Dean's Approval: _____
 Approval Date: _____
 Finance Approval: _____
 Approval Date: _____

LC000342
AUA000525

**American University of Antigua
College of Medicine
Check Request Form**

AUA Employee Information

Name: Mike Johnson

Department: Construction

DATE: 13-Jun-08

Phase 1: Classroom /Library/Nurses: Leeward Construction

Interim Payment #6.00 Mobilization 806,460.00

ABST 120,969.00

Total Payment EC \$ 927,429.00

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS#

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Raod

P.O. Box, 1400

St. John's

Antigua

US \$'s

EC \$'s

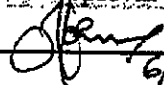
CHEQUE AMOUNT

927,429.00

Additional Comments

Approved For Payment Pending Agreement of Bill of Quantities Rates & Completion of Contract.

Approval

Requestor's Signature: 

Request Date: 6/13/08

Dean's Approval:

Approval Date:

Finance Approval:

Approval Date:

LC000372

AUA000555

American University of Antigua
College of Medicine
Check Request Form

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AUA Employee InformationName: Mike JohnsonDepartment: ConstructionDATE: July 25th, 2008**Phase 1: Classroom/Library/Nurses: Leeward Construction**Interim Payment #7.00 Measured Works/Materials on Site. 1,176,211.22ABST 176,431.68Total Payment 1,352,642.90**Vendor Information**Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS# _____

Make check payable to: Leeward Construction Company Ltd.Contact name: Neil DickensonContact phone #: 729-0072Payment address: All Saints RoadP.O. Box, 1400Antigua

US \$'s

EC \$'s

CHEQUE AMOUNT

1,352,624.90**Additional Comments**

*Approved for payment pending agreement of BOR safety and Pre. Work,
 and completion of contract.*

7/25/08

Approval

Requestor's Signature: _____

Request Date: 7/25/08

Manager's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

LC000377

AUA000560

**American University of Antigua
College of Medicine
Check Request Form**

AUA Employee Information

Name: Lt Col Roche Antony

Department: Construction

DATE: September 18th, 2008

Phase 1: Classroom/Library/Nurses: Leeward Construction

Interim Payment #10.00 Measured Works/Materials on Site.	64,446.50
ABST	9,666.98
Prelims From 8/3/08 to 30/4/08	199,853.39
Total	EC \$ 273,966.87

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS# _____

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Raod
P.O. Box, 1400
St. John's
Antigua

US \$'s	EC \$'s
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CHEQUE AMOUNT 273,966.87

Additional Comments

Nil

Approval

Requestor's Signature: *Certified for payment EC \$273,966.87*

Request Date: _____

Dean's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

LC000523
AUA000684

**American University of Antigua
College of Medicine
Check Request Form**

Employee Information

Name: Lt Col Roche Antony

Department: Construction

DATE: October 14th, 2008

Phase 1: Classroom/Library/Nurses: Leeward Construction

Interim Payment #1	00 Measured Works/Materials on Site.	958,531.17
ABST		143,779.67
Total		EC \$ 1,102,310.84

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS#: ABSTNO:TIN0502142

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Road
P.O. Box, 1400
St. John's
Antigua

US \$:	EC \$:
	1,102,310.84

CHEQUE AMOUNT

Additional Comments:

*Issued for payment EC \$ 1,102,310.84
(EC \$ One million one hundred two thousand three hundred ten
and eighty four cents only)*

Requestor's Signature: *[Signature]*

Request Date: Lt Col Roche Antony, Gen. Projects. 14 Oct 2008

Dean's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

AUA000789

**American University of Antigua
College of Medicine
Check Request Form**



Requester Information

Name: Lt Col Roche Antony

Department: Construction

DATE: November 17th, 2008

Phase 1: Classroom/Library/Nurses: Leeward Construction

Interim Payment #12.00 Measured Works/Materials on Site.	\$718,588.47
ABST	\$107,788.27
Outstanding ABST Application #10	\$29,978.00
Total	\$856,354.74

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS#: ABSTNO:TIN0502142

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Road
P.O. Box, 1400
St. John's
Antigua

US \$:	EC \$:
CHEQUE AMOUNT	856,354.74

Additional Comments:

Site Closure was effected by LC with effect from 24 October 2008 to 14 November 2008. No time have been included for one week for the month of Oct in the payment application. Without prejudice, the amount is released against total contract/completion period of 52 weeks.

14 November 2008

Approval

Requestor's Signature: *Antony Roche*

Request Date: *17 Nov 2008*

Dean's Approval: *Neil Dickenson*

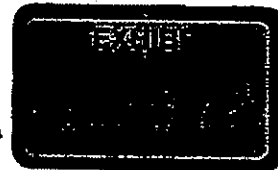
Approval Date: *14 Nov 2008*

Finance Approval: _____

Approval Date: _____

AUA000856

**American University of Antigua
College of Medicine
Check Request Form**



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AUA Employee Information

Name: Lt Col Roche Antony
 Department: Construction
 DATE: December 16th, 2008

Phase 1: Classroom/Library/Nurses: Leeward Construction

Interim Payment #13.00 Measured Works/Materials on Site.	\$2,731,178.48
ABST	\$409,676.77
Less Mobilisation Advance	\$1,956,460.00
Total	\$1,184,395.25

Vendor Information

Vendor's name: Leeward Construction Company Ltd.
 Vendor's TIN / SS#: ABSTNO:TIN0502142
 Make check payable to: Leeward Construction Company Ltd.
 Contact name: Neil Dickenson
 Contact phone #: 729-0072
 Payment address: All Saints Road
P.O. Box, 1400
St. John's
Antigua

US \$'s

EC \$'s

CHEQUE AMOUNT

1,184,395.25

Additional Comments

*Amount for payment EC \$1,184,395.25 only.
 Eastern Caribbean Dollars One million one hundred and eighty four thousand three hundred ninety five and twenty five cent only.*

Approval

Requestor's Signature: [Signature]
 Request Date: 16 December, 2008
 Dean's Approval: _____
 Approval Date: _____
 Finance Approval: _____
 Approval Date: _____

AUA000956



ALBA Employee Information Form

Name: 1. Col Roche Antony

Department: Construction

DATE: February 18th, 2009

Phase I: Classroom/Library/Nurses: Leeward Construction

Interim Payment #15.00 Measured Works/Materials on Site. \$11,993,466.76

Less 5% Retention \$599,673.34

Previous Payments \$9,855,649.87

Subtotal \$1,538,143.55

ABST 15% \$230,721.53

Total Payment \$1,768,865.09

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SSN ABSINO: TIN0502142

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Road

P.O. Box, 1400

Sr. John's

Antigua

US\$ 1,768,865.09 EC\$

CHEQUE AMOUNT 1,768,865.09

Additional Comments

Taxes for payments of \$1,768,865.09 only.

Approval

Requestor's Signature: [Signature]

Request Date: 18 February 2009.

Dean's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

AUA001163

①



===== AUA Employee Information =====

Name: Lt Col Roche Antony

Department: Construction

DATE: March 11th, 2009

===== Phase 1: Classroom/Library/Nurses: Lceward Construction =====

Interim Payment #16.00 Measured Works/Materials on Site. \$14,874,552.22

Less 5% Retention \$743,726.61

Previous Payments \$11,393,793.12

Subtotal \$2,737,012.49

ABST 15% \$410,551.87

Total Payment \$3,147,564.36

===== Vendor Information =====

Vendor's name: Lceward Construction Company Ltd.

Vendor's TIN / SSN: ABSTNO: TIN0502142

Make check payable to: Lceward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Road

P.O. Box, J400

St. John's

Antigua

US \$: _____ ECS \$: _____

CHEQUE AMOUNT 3,147,564.36

===== Additional Comments =====

...used for payment EC\$ 3,147,564.36 only.

NOTE: Payment due by 1st March 2009.

===== Approval =====

Requestor's Signature: [Signature] 11 March 2009

Request Date: Lt Col Roche Antony, General Manager, Prefect

Dean's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

AUA001183

(1)

----- AUA Employee Information -----

Name: LT Col Roche, Anthony
 Department: Construction
 DATE: April 17th, 2009

----- Phase 1: Classroom/Library/Nurses: Leeward Construction -----

Interim Payment #17.00 Measured Works/Materials on Site.	\$17,716,317.09
Less 5% Retention	\$885,815.85
Previous Payments	\$14,130,505.61
Subtotal	\$2,699,695.63
Retention Release (Classroom 50%)	\$38,951.85
Retention Release (Service 50%)	\$29,902.91
ABST 15%	\$415,282.54

Total Payment \$3,183,832.95

----- Vendor Information -----

Vendor's name: Leeward Construction Company Ltd.
 Vendor's TIN / SSN: ABSTNO: TIN0502142
 Make check payable to: Leeward Construction Company Ltd.
 Contact name: Neil Dickenson
 Contact phone #: 729-0072
 Payment address: All Saints Road
P.O. Box, 1400
St. John's
Antigua
 US \$'s _____ EC \$'s _____

CHEQUE AMOUNT 3,183,832.95

----- Additional Comments -----

Added for payment EC \$ 3,183,832.95

----- Approval -----

Requestor's Signature: [Signature] LT COL ROCHE ANTHONY
 Request Date: 17 APRIL 2009
 Dean's Approval: _____
 Approval Date: _____
 Finance Approval: _____
 Approval Date: _____

AUA001204

AUA Employee Information

Name: La Col Roche Antony

Department: Construction

DATE: April 17th, 2009

Phase 1: Classroom/Library/Nurses: Leeward Construction

Interim Payment #18.00 Measured Works/Materials on Site.	\$19,094,021.50
Less 5% Retention	\$954,701.08
Previous Payments	\$16,899,356.01
Subtotal	\$1,239,946.42
Retention Release (Classroom 50%)	\$40,368.71
Retention Release (Service 50%)	\$29,874.62
ABST 15%	\$196,410.71

Total Payment \$1,505,815.46

Vendor Information

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS# ABSTNO: TIN0502142

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Road
P.O. Box, 1400
St John's
Antigua

US \$:	EC \$:
CHEQUE AMOUNT	1,505,815.46

Additional Comments

Made for payment EC \$1,505,815.46

Approvals

Requestor's Signature: *La Col Roche Antony*

Request Date: 11 May, 2009

Dean's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

AUA001413

American University of Antigua
College of Medicine
Check Request Form

~~AUA Employee Information~~

Name: Li Col Roche Antony

Department: Construction

DATE: October 22nd, 2009

Phase 1: Classroom/Library/Nurses: Leeward Construction

Interim Payment Draft Final Account Measured Works/Materials on Site.	\$23,603,320.00
Less 5% Retention	\$1,180,166.00
Previous Payments	\$22,908,374.09
Subtotal	-\$485,220.09
Retention Release	\$590,083.00
Total Payment	\$104,862.91

ABST 15%	\$15,729.44
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Total Payment	\$120,592.35
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~~Vendor Information~~

Vendor's name: Leeward Construction Company Ltd.

Vendor's TIN / SS# ABSTNO:TIN0502142

Make check payable to: Leeward Construction Company Ltd.

Contact name: Neil Dickenson

Contact phone #: 729-0072

Payment address: All Saints Road

P.O. Box, 1400

St. John's

Antigua

US \$'s	EC \$'s.
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CHEQUE AMOUNT	120,592.35
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~~Additional Comments~~

Interim for payment of \$120,592.35 Only towards interim draft final account of \$2,500,000.00 fully released

~~Approval~~

Requestor's Signature: [Signature] Li Col Roche Antony

Request Date: Oct 22nd, 2009

Dean's Approval: _____

Approval Date: _____

Finance Approval: _____

Approval Date: _____

AUA002854